

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA**

<b>MARANDA LAVON CARPITCHER,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CIV-19-190-JFH-SPS</b>
	)	
<b>COMMISSIONER of the Social</b>	)	
<b>Security Administration,</b>	)	
	)	
<b>Defendant.</b>	)	

**REPORT AND RECOMMENDATION**

The claimant Maranda Lavon Carpitcher requests judicial review of a denial of benefits by the Commissioner of the Social Security Administration pursuant to 42 U.S.C. § 405(g). She appeals the Commissioner’s decision and asserts that the Administrative Law Judge (“ALJ”) erred in determining she was not disabled. For the reasons discussed below, the Commissioner’s decision should be AFFIRMED.

**Social Security Law and Standard of Review**

Disability under the Social Security Act is defined as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment[.]” 42 U.S.C. § 423(d)(1)(A). A claimant is disabled under the Social Security Act “only if h[er] physical or mental impairment or impairments are of such severity that [s]he is not only unable to do h[er] previous work but cannot, considering h[er] age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy[.]” *Id.* § 423 (d)(2)(A). Social security regulations

implement a five-step sequential process to evaluate a disability claim. *See* 20 C.F.R. §§ 404.1520, 416.920.<sup>1</sup>

Section 405(g) limits the scope of judicial review of the Commissioner’s decision to two inquiries: whether the decision was supported by substantial evidence and whether correct legal standards were applied. *See Hawkins v. Chater*, 113 F.3d 1162, 1164 (10th Cir. 1997). Substantial evidence is “‘more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’” *Richardson v. Perales*, 402 U.S. 389, 401 (1971), *quoting Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938); *see also Clifton v. Chater*, 79 F.3d 1007, 1009 (10th Cir. 1996). The Court may not reweigh the evidence or substitute its discretion for the Commissioner’s. *See Casias v. Secretary of Health & Human Services*, 933 F.2d 799, 800 (10th Cir. 1991). But the Court must review the record as a whole, and “[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight.”

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<sup>1</sup> Step one requires the claimant to establish that she is not engaged in substantial gainful activity. Step two requires the claimant to establish that she has a medically severe impairment (or combination of impairments) that significantly limits her ability to do basic work activities. If the claimant *is* engaged in substantial gainful activity, or her impairment *is not* medically severe, disability benefits are denied. If she *does* have a medically severe impairment, it is measured at step three against the listed impairments in 20 C.F.R. Part 404, Subpt. P, App. 1. If the claimant has a listed (or “medically equivalent”) impairment, she is regarded as disabled and awarded benefits without further inquiry. Otherwise, the evaluation proceeds to step four, where the claimant must show that she lacks the residual functional capacity (“RFC”) to return to her past relevant work. At step five, the burden shifts to the Commissioner to show there is significant work in the national economy that the claimant *can* perform, given her age, education, work experience, and RFC. Disability benefits are denied if the claimant can return to any of her past relevant work or if her RFC does not preclude alternative work. *See generally Williams v. Bowen*, 844 F.2d 748, 750-51 (10th Cir. 1988).

*Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *see also Casias*, 933 F.2d at 800-01.

### **Claimant's Background**

The claimant was forty years old at the time of the administrative hearing (Tr. 114, 318). She completed high school, and has past relevant work as an advertising clerk, administrative clerk, credit clerk, and credit and collections supervisor (Tr. 75-76, 346). The claimant alleges that she has been unable to work since August 3, 2016, due to depression, anxiety, neuropathy, mental illness, irritable bowel syndrome, a bone spur, PTSD, a mood disorder, and panic attacks (Tr. 345).

### **Procedural History**

On January 24, 2017, the claimant applied for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-434, and for supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-85. Her applications were denied. ALJ Doug Gabbard, II, conducted an administrative hearing and determined that the claimant was not disabled in a written opinion dated August 22, 2018 (Tr. 65-77). The Appeals Council denied review, so the ALJ's opinion represents the final decision of the Commissioner for purposes of this appeal. *See* 20 C.F.R. §§ 404.981, 416.1481.

### **Decision of the Administrative Law Judge**

The ALJ made his decision at step five of the sequential evaluation. At step two, the ALJ found that the claimant had the severe impairments of back degenerative disc disease, right shoulder degenerative joint disease, depression, personality disorder, and

PTSD (Tr. 68). At step four, he then found that the claimant had the residual functional capacity (“RFC”) to perform a range of medium work as defined in 20 C.F.R. § 404.1567(c) & 416.967(c), except that she could only occasionally reach overhead with the right dominant arm. Additionally, he found she could perform unskilled work which is simple, repetitive, and routine; her supervision must be simple, direct, and concrete; interpersonal contact with supervisors and co-workers must be incidental to the work performed, *e. g.* assembly work; she must not be required to work at fast-paced production line speeds; and she should have only occasional contact with the general public (Tr. 70). The ALJ then concluded at step five that although the claimant could not return to her past relevant work, she was nevertheless not disabled because there was work that she could perform, *e. g.*, laundry worker and trimmer (Tr. 75-77).

### **Review**

The claimant’s sole contention of error is that she cannot perform the jobs identified at step five, in light of the assigned RFC. Because this contention lacks merit, the decision of the Commissioner should be affirmed.

At the administrative hearing, the ALJ elicited testimony from a vocational expert (“VE”) to determine if there were other jobs the claimant could perform with the RFC outlined above, specifically including the limitation to “unskilled work, which is simple, repetitive, and routine” (Tr. 139-140). The VE indicated that the claimant could not perform any of her past work but identified two medium jobs such a person could perform: (i) laundry sorter, DICOT § 361.684-014; and (ii) trimmer, DICOT § 869.684-066

(Tr. 140). The VE further testified that the information provided was consistent with the Dictionary of Occupational Titles (“DOT”) (Tr. 142).

As relevant to this appeal, the ALJ in his written decision adopted the VE’s testimony that the claimant could perform the medium jobs of laundry worker and trimmer (Tr. 77). Furthermore, the ALJ specifically found that the VE’s “testimony [wa]s consistent with the information contained in the [DOT]” (Tr. 77). The claimant, however, asserts that the ALJ erred in identifying jobs she could perform because there was a conflict between the information provided and the Dictionary of Occupational Titles (“DOT”).

Under Social Security Ruling 00-4p, “When vocational evidence provided by a VE or VS is not consistent with information in the DOT, the [ALJ] must resolve this conflict before relying on the VE or VS evidence to support a determination or decision that the individual is or is not disabled. The [ALJ] will explain in the determination or decision how he or she resolved the conflict. The [ALJ] must explain the resolution of the conflict *irrespective of how the conflict was identified.*” 2000 WL 1898704, at \*4 (Dec. 4, 2000) [emphasis added]. Although the VE did not identify any conflict between her testimony and the DOT, the claimant contends there is a conflict with regard to the reasoning levels of the jobs identified. *See Haddock v. Apfel*, 196 F.3d 1084, 1091 (10th Cir. 1999) (“[T]he ALJ must investigate and elicit a reasonable explanation for any conflict between the [DOT] and expert testimony before the ALJ may rely on the expert’s testimony as substantial evidence to support a determination of nondisability.”).

Both jobs, laundry worker and trimmer, have reasoning levels of 2. *See* DICOT §§ 361.684-014, 869.684-066. A reasoning level of two requires a worker to “[a]pply

commonsense understanding to carry out detailed but uninvolved written or oral instructions” and to “[d]eal with problems involving a few concrete variables in or from standardized situations.” *See* DICT §§ 361.684-014, 869.684-066. The claimant asserts that this reasoning level is incompatible with simple, repetitive, routine work. The undersigned Magistrate Judge agrees with the Commissioner, however, that a reasoning level of two *is consistent* with performing simple tasks, although a reasoning level of three is not, and that other courts have reached the same conclusion. *See Hackett v. Barnhart*, 395 F.3d, 1168, 1176 (10th Cir. 2005) (“This level-two reasoning appears more consistent with Plaintiff’s RFC [limiting her to simple and routine work tasks.]”); *Stokes v. Astrue*, 274 Fed. Appx. 675, 684 (10th Cir. 2008) (“Ms. Stokes’ second argument is that the ALJ’s limitation to simple, repetitive and routine work should be construed as a limitation to jobs with a reasoning-level rating of one. We disagree.”). *See also Couch v. Berryhill*, 2017 WL 1194344, at \*4 (E.D. Okla. March 13, 2017) (“In accordance with the court’s findings in *Hackett*, a restriction to simple work is consistent with this reasoning level [of 2.]”); *Goleman v. Colvin*, 2016 WL 3556958, at \*4 (W.D. Okla. May 6, 2016) (where RFC limited claimant to “simple, routine, repetitive instructions[,] [t]he ALJ properly relied on the jobs identified by the VE with a reasoning level of two.”).

The undersigned Magistrate Judge thus finds that the jobs identified do not pose a conflict. *See Stokes v. Astrue*, 274 Fed. Appx. 675, 684 (10th Cir. 2008) (finding that any error on whether claimant could perform jobs was harmless error since there were still two jobs claimant could perform). Accordingly, the decision of the ALJ should be affirmed.

### **Conclusion**

The undersigned Magistrate Judge hereby PROPOSES a finding by the Court that correct legal standards were applied by the ALJ, and the Commissioner's decision is therefore legally correct. The undersigned Magistrate Judge thus RECOMMENDS that the Court AFFIRM the decision of the Commissioner. Any objections to this Report and Recommendation must be filed within fourteen days. *See* Fed. R. Civ. P. 72(b).

**DATED** this 24th day of February, 2021.



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**STEVEN P. SHREDER**  
**UNITED STATES MAGISTRATE JUDGE**